

SENATE BILL NO. 450

INTRODUCED BY J. KEANE

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE ALCOHOL AND TOBACCO SCHOLARSHIP PROGRAM; PROVIDING FOR THE FUNDING OF THE PROGRAM THROUGH THE IMPOSITION OF A SURCHARGE ON OFFENSES INVOLVING UNLAWFUL PURCHASE OR POSSESSION OF ALCOHOL OR TOBACCO BY MINORS AND DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; AMENDING SECTIONS 45-5-624, 45-5-637, 61-8-410, 61-8-714, 61-8-722, AND 61-8-731, MCA; REPEALING SECTION 20-26-601, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Alcohol and tobacco scholarships -- criteria -- distribution. (1) There is an alcohol and tobacco scholarship program to be administered under the provisions of this part and to be awarded annually by the board at the discretion of the board. A scholarship may not be awarded to an individual who has been convicted of an offense under 45-5-624, 45-5-637, 61-8-410, 61-8-714, 61-8-722, or 61-8-731.

(2) Individuals awarded scholarships must be:

(a) residents of the state of Montana who are graduating from high school in the spring of the award year; and

(b) accepted to attend a school within the Montana university system.

(3) Awards must be based on financial need and merit, with an emphasis on financial need. All scholarships awarded must be equal to each other in amount.

NEW SECTION. Section 2. Alcohol and tobacco scholarship account. (1) There is an alcohol and tobacco scholarship account within the state special revenue fund provided for in 17-2-102. Money in the account must be used for the purposes of [section 1].

(2) All money received from the educational surcharge collected under 45-5-624, 45-5-637, 61-8-410, 61-8-714, 61-8-722, and 61-8-731 must be deposited in the account. Money in the account may not revert to the general fund at the close of any fiscal year. Interest and earnings on the account must be credited to the account.

1 **Section 3.** Section 45-5-624, MCA, is amended to read:

2 **"45-5-624. Unlawful attempt to purchase or possession of intoxicating substance -- interference**
3 **with sentence or court order -- scholarship surcharge.** (1) A person under 21 years of age commits the
4 offense of possession of an intoxicating substance if the person knowingly consumes or has in the person's
5 possession an intoxicating substance. A person may not be arrested for or charged with the offense solely
6 because the person was at a place where other persons were possessing or consuming alcoholic beverages.
7 A person does not commit the offense if the person consumes or gains possession of an alcoholic beverage
8 because it was lawfully supplied to the person under 16-6-305 or when in the course of employment it is
9 necessary to possess alcoholic beverages.

10 (2) (a) In addition to any disposition by the youth court under 41-5-1512, a person under 18 years of age
11 who is convicted under this section:

12 (i) for the first offense, shall be fined an amount not less than \$100 and not to exceed \$300 and:

13 (A) shall be ordered to perform 20 hours of community service;

14 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
15 pay all costs of participation in a community-based substance abuse information course that meets the
16 requirements of subsection (9), if one is available; and

17 (C) if the person has a driver's license, must have the license confiscated by the court for 30 days,
18 except as provided in subsection (2)(b);

19 (ii) for a second offense, shall be fined an amount not less than \$200 and not to exceed \$600 and:

20 (A) shall be ordered to perform 40 hours of community service;

21 (B) shall be ordered, and the person's parent or parents or guardian shall be ordered, to complete and
22 pay all costs of participation in a community-based substance abuse information course that meets the
23 requirements of subsection (9), if one is available;

24 (C) if the person has a driver's license, must have the license confiscated by the court for 6 months,
25 except as provided in subsection (2)(b); and

26 (D) shall be required to complete a chemical dependency assessment and treatment, if recommended,
27 as provided in subsection (8);

28 (iii) for a third or subsequent offense, shall be fined an amount not less than \$300 or more than \$900,
29 shall be ordered to perform 60 hours of community service, shall be ordered, and the person's parent or parents
30 or guardian shall be ordered, to complete and pay all costs of participation in a community-based substance

1 abuse information course that meets the requirements of subsection (9), if one is available, and shall be required
2 to complete a chemical dependency assessment and treatment, if recommended, as provided in subsection (8).
3 If the person has a driver's license, the court shall confiscate the license for 6 months, except as provided in
4 subsection (2)(b).

5 (b) If the convicted person fails to complete the community-based substance abuse course and has a
6 driver's license, the court shall order the license suspended for 3 months for a first offense, 9 months for a second
7 offense, and 12 months for a third or subsequent offense.

8 (c) The court shall retain jurisdiction for up to 1 year to order suspension of a license under subsection
9 (2)(b).

10 (3) A person 18 years of age or older who is convicted of the offense of possession of an intoxicating
11 substance:

12 (a) for a first offense:

13 (i) shall be fined an amount not less than \$100 or more than \$300;

14 (ii) shall be ordered to perform 20 hours of community service; and

15 (iii) shall be ordered to complete and pay all costs of participation in a community-based substance abuse
16 information course that meets the requirements of subsection (9);

17 (b) for a second offense:

18 (i) shall be fined an amount not less than \$200 or more than \$600;

19 (ii) shall be ordered to perform 40 hours of community service; and

20 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
21 program that meets the requirements of subsection (9), which may, in the court's discretion and upon
22 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both;

23 (c) for a third or subsequent offense:

24 (i) shall be fined an amount not less than \$300 or more than \$900;

25 (ii) shall be ordered to perform 60 hours of community service;

26 (iii) shall be ordered to complete and pay for an alcohol information course at an alcohol treatment
27 program that meets the requirements of subsection (9), which may, in the sentencing court's discretion and upon
28 recommendation of a licensed addiction counselor, include alcohol or drug treatment, or both; and

29 (iv) in the discretion of the court, shall be imprisoned in the county jail for a term not to exceed 6 months.

30 (4) A person under 21 years of age commits the offense of attempt to purchase an intoxicating substance

1 if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase
2 an intoxicating substance shall be fined an amount not to exceed \$150 if the person was under 21 years of age
3 at the time that the offense was committed and may be ordered to perform community service.

4 (5) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18
5 years of age when the defendant failed to comply must be transferred to the youth court. If proceedings for failure
6 to comply with a sentence are held in the youth court, the offender must be treated as an alleged youth in need
7 of intervention as defined in 41-5-103. The youth court may enter its judgment under 41-5-1512.

8 (6) A person commits the offense of interference with a sentence or court order if the person purposely
9 or knowingly causes a child or ward to fail to comply with a sentence imposed under this section or a youth court
10 disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or
11 imprisoned in the county jail for 10 days, or both.

12 (7) A conviction or youth court adjudication under this section must be reported by the court to the
13 department of public health and human services if treatment is ordered under subsection (8).

14 (8) (a) A person convicted of a second or subsequent offense of possession of an intoxicating substance
15 shall be ordered to complete a chemical dependency assessment.

16 (b) The assessment must be completed at a treatment program that meets the requirements of
17 subsection (9) and must be conducted by a licensed addiction counselor. The person may attend a program of
18 the person's choice as long as a licensed addiction counselor provides the services. If able, the person shall pay
19 the cost of the assessment and any resulting treatment.

20 (c) The assessment must describe the person's level of abuse or dependency, if any, and contain a
21 recommendation as to the appropriate level of treatment if treatment is indicated. A person who disagrees with
22 the initial assessment may, at the person's expense, obtain a second assessment provided by a licensed
23 addiction counselor or program that meets the requirements of subsection (9).

24 (d) The treatment provided must be at a level appropriate to the person's alcohol or drug problem, or
25 both, if any, as determined by a licensed addiction counselor pursuant to diagnosis and patient placement rules
26 adopted by the department of public health and human services. Upon the determination, the court shall order
27 the appropriate level of treatment, if any. If more than one counselor makes a determination, the court shall order
28 an appropriate level of treatment based upon the determination of one of the counselors.

29 (e) Each counselor providing treatment shall, at the commencement of the course of treatment, notify
30 the court that the person has been enrolled in a chemical dependency treatment program. If the person fails to

1 attend the treatment program, the counselor shall notify the court of the failure.

2 (f) The court shall report to the department of public health and human services the name of any person
3 who is convicted under this section. The department of public health and human services shall maintain a list of
4 those persons who have been convicted under this section. This list must be made available upon request to
5 peace officers and to any court.

6 (9) (a) A community-based substance abuse information course required under subsection (2)(a)(i)(B),
7 (2)(a)(ii)(B), (2)(a)(iii), or (3)(a)(iii) must be:

8 (i) approved by the department of public health and human services under 53-24-208 or by a court or
9 provided under a contract with the department of corrections; or

10 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
11 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
12 chemical dependency services.

13 (b) An alcohol information course required under subsection (3)(b)(iii) or (3)(c)(iii) must be provided at
14 an alcohol treatment program:

15 (i) approved by the department of public health and human services under 53-24-208 or by a court or
16 provided under a contract with the department of corrections; or

17 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
18 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
19 chemical dependency services.

20 (c) A chemical dependency assessment required under subsection (8) must be completed at a treatment
21 program:

22 (i) approved by the department of public health and human services under 53-24-208 or by a court or
23 provided under a contract with the department of corrections; or

24 (ii) provided by a hospital licensed under Title 50, chapter 5, part 2, that provides chemical dependency
25 services and that is accredited by the joint commission on accreditation of healthcare organizations to provide
26 chemical dependency services.

27 (10) Information provided or statements made by a person under 21 years of age to a health care
28 provider or law enforcement personnel regarding an alleged offense against that person under Title 45, chapter
29 5, part 5, may not be used in a prosecution of that person under this section. This subsection's protection also
30 extends to a person who helps the victim obtain medical or other assistance or report the offense to law

1 enforcement personnel.

2 (11) In addition to any other penalty imposed under this section, a court shall impose on each person
3 convicted under this section a surcharge of not less than \$10 or more than \$50. If the court determines that the
4 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed
5 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
6 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
7 account established in [section 2]. (See compiler's comments for contingent termination of certain text.)"

8
9 **Section 4.** Section 45-5-637, MCA, is amended to read:

10 **"45-5-637. Tobacco possession or consumption by persons under 18 years of age prohibited --**
11 **unlawful attempt to purchase -- penalties -- scholarship surcharge.** (1) A person under 18 years of age who
12 knowingly possesses or consumes a tobacco product, as defined in 16-11-302, commits the offense of
13 possession or consumption of a tobacco product.

14 (2) A person convicted of possession or consumption of a tobacco product:

15 (a) shall be fined \$50 for a first offense, no less than \$75 or more than \$100 for a second offense, and
16 no less than \$100 or more than \$250 for a third or subsequent offense; or

17 (b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the
18 provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

19 (3) A person convicted of possession or consumption of a tobacco product may also be required to
20 perform community service or to attend a tobacco cessation program.

21 (4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product if the
22 person knowingly attempts to purchase a tobacco product, as defined in 16-11-302. A person convicted of
23 attempt to purchase a tobacco product:

24 (a) for a first offense, shall be fined \$50 and may be ordered to perform community service;

25 (b) for a second or subsequent offense, shall be fined an amount not to exceed \$100 and may be
26 ordered to perform community service.

27 (5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund
28 of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway
29 patrol, the fines must be credited to the county general fund in the county in which the arrest was made.

30 (6) In addition to any other penalty imposed under this section, a court shall impose on each person

1 convicted under this section a surcharge of not less than \$10 or more than \$50. If the court determines that the
2 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed
3 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
4 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
5 account established in [section 2]."

6
7 **Section 5.** Section 61-8-410, MCA, is amended to read:

8 **"61-8-410. Operation of vehicle by person under twenty-one with alcohol concentration of 0.02**
9 **or more -- scholarship surcharge.** (1) It is unlawful for a person under ~~the age of 21~~ years of age who has an

10 alcohol concentration of 0.02 or more to drive or be in actual physical control of a vehicle upon ways of this state
11 open to the public. Absolute liability, as provided for in 45-2-104, is imposed for a violation of this section.

12 (2) Upon a first conviction under this section, a person shall be punished by a fine of not less than \$100
13 or more than \$500.

14 (3) Upon a second conviction under this section, a person shall be punished by a fine of not less than
15 \$200 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not more than 10 days.

16 (4) Upon a third or subsequent conviction under this section, a person shall be punished by a fine of not
17 less than \$300 or more than \$500 and, if the person is 18 years of age or older, by incarceration for not less than
18 24 consecutive hours or more than 60 days.

19 (5) In addition to the punishment provided in this section, regardless of disposition:

20 (a) the person shall comply with the chemical dependency education course and chemical dependency
21 treatment provisions in 61-8-732 as ordered by the court; and

22 (b) the department shall suspend the person's driver's license for 90 days upon the first conviction, 6
23 months upon the second conviction, and 1 year upon the third or subsequent conviction. A restricted or
24 probationary driver's license may not be issued during the suspension period until the person has paid a license
25 reinstatement fee in accordance with 61-2-107 and, if the person was under ~~the age of 18~~ years of age at the
26 time of the offense, has completed at least 30 days of the suspension period.

27 (6) A conviction under this section may not be counted as a prior conviction under 61-8-401 or 61-8-406.

28 (7) In addition to any other penalty imposed under this section, a court shall impose on each person
29 convicted under this section a surcharge of not less than \$25 or more than \$100. If the court determines that the
30 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed

1 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
2 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
3 account established in [section 2]."
4

5 **Section 6.** Section 61-8-714, MCA, is amended to read:

6 **"61-8-714. Penalty for driving under influence of alcohol or drugs -- first through third offense --**
7 **scholarship surcharge.** (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-401
8 shall be punished by imprisonment for not less than 24 consecutive hours or more than 6 months and by a fine
9 of not less than \$300 or more than \$1,000, except that if one or more passengers under 16 years of age were
10 in the vehicle at the time of the offense, the person shall be punished by imprisonment for not less than 48
11 consecutive hours or more than 12 months and by a fine of not less than \$600 or more than \$2,000. The initial
12 24 hours of the imprisonment term must be served and may not be served under home arrest. The mandatory
13 imprisonment sentence may not be suspended unless the judge finds that the imposition of the imprisonment
14 sentence will pose a risk to the person's physical or mental well-being. Except for the initial 24 hours of the
15 imprisonment term, notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period
16 of up to 1 year pending successful completion of court-ordered chemical dependency assessment, education,
17 or treatment by the person.

18 (2) Except as provided in subsection (4), on a second conviction, the person shall be punished by a fine
19 of not less than \$600 or more than \$1,000 and by imprisonment for not less than 7 days or more than 6 months,
20 except that if one or more passengers under 16 years of age were in the vehicle at the time of the offense, the
21 person shall be punished by a fine of not less than \$1,200 or more than \$2,000 and by imprisonment for not less
22 than 14 days or more than 12 months. At least 48 hours of the imprisonment term must be served and served
23 consecutively and may not be served under home arrest. The imposition or execution of the first 5 days of the
24 imprisonment sentence may not be suspended. Except for the initial 5 days of the imprisonment term,
25 notwithstanding 46-18-201(2), the imprisonment sentence may be suspended for a period of up to 1 year pending
26 successful completion of a chemical dependency treatment program by the person.

27 (3) Except as provided in subsection (4), on the third conviction, the person shall be punished by
28 imprisonment for a term of not less than 30 days or more than 1 year and by a fine of not less than \$1,000 or
29 more than \$5,000, except that if one or more passengers under 16 years of age were in the vehicle at the time
30 of the offense, the person shall be punished by imprisonment for a term of not less than 60 days or more than

1 12 months and by a fine of not less than \$2,000 or more than \$10,000. At least 48 hours of the imprisonment term
2 must be served and served consecutively and may not be served under home arrest. The imposition or execution
3 of the first 10 days of the imprisonment sentence may not be suspended. The remainder of the imprisonment
4 sentence may be suspended for a period of up to 1 year pending successful completion of a chemical
5 dependency treatment program by the person.

6 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
7 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
8 alcohol concentration.

9 (5) In addition to any other penalty imposed under this section, a court shall impose on each person
10 sentenced under this section a surcharge of not less than \$25 or more than \$100. If the court determines that the
11 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed
12 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
13 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
14 account established in [section 2]."
15

16 **Section 7.** Section 61-8-722, MCA, is amended to read:

17 **"61-8-722. Penalty for driving with excessive alcohol concentration -- first through third offense**
18 **-- scholarship surcharge.** (1) Except as provided in subsection (4), a person convicted of a violation of 61-8-406
19 shall be punished by imprisonment for not more than 10 days and by a fine of not less than \$300 or more than
20 \$1,000, except that if one or more passengers under 16 years of age were in the vehicle at the time of the
21 offense, the person shall be punished by imprisonment for not more than 20 days and by a fine of not less than
22 \$600 or more than \$2,000.

23 (2) Except as provided in subsection (4), on a second conviction of a violation of 61-8-406, the person
24 shall be punished by imprisonment for not less than 5 days, to be served in the county jail and not on home arrest,
25 or more than 30 days and by a fine of not less than \$600 or more than \$1,000, except that if one or more
26 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished
27 by imprisonment for not less than 10 days, which may not be served on home arrest, or more than 60 days and
28 by a fine of not less than \$1,200 or more than \$2,000. The imposition or execution of the first 5 days of the
29 imprisonment sentence may not be suspended.

30 (3) Except as provided in subsection (4), on a third conviction of a violation of 61-8-406, the person shall

1 be punished by imprisonment for not less than 10 days, to be served in the county jail and not on home arrest,
2 or more than 6 months and by a fine of not less than \$1,000 or more than \$5,000, except that if one or more
3 passengers under 16 years of age were in the vehicle at the time of the offense, the person shall be punished
4 by imprisonment for not less than 20 days, which may not be served on home arrest, or more than 12 months
5 and by a fine of not less than \$2,000 or more than \$10,000. The imposition or execution of the first 10 days of
6 the imprisonment sentence may not be suspended.

7 (4) If the person has a prior conviction under 45-5-106, the person shall be punished as provided in
8 61-8-731 for a fourth or subsequent offense of driving under the influence of alcohol or drugs or with an excessive
9 alcohol concentration.

10 (5) In addition to any other penalty imposed under this section, a court shall impose on each person
11 sentenced under this section a surcharge of not less than \$25 or more than \$100. If the court determines that the
12 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed
13 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
14 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
15 account established in [section 2]."
16

17 **Section 8.** Section 61-8-731, MCA, is amended to read:

18 **"61-8-731. Driving under influence of alcohol or drugs -- driving with excessive alcohol**
19 **concentration -- penalty for fourth or subsequent offense -- scholarship surcharge.** (1) Except as provided
20 in subsection (3), if a person is convicted of a violation of 61-8-401 or 61-8-406 and the person has either a single
21 conviction under 45-5-106 or any combination of three or more prior convictions under 45-5-104, 45-5-205,
22 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while
23 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided
24 in 61-8-401(1), the person is guilty of a felony and shall be punished by:

25 (a) sentencing the person to the department of corrections for placement in an appropriate correctional
26 facility or program for a term of 13 months. The court shall order that if the person successfully completes a
27 residential alcohol treatment program operated or approved by the department of corrections, the remainder of
28 the 13-month sentence must be served on probation. The imposition or execution of the 13-month sentence may
29 not be deferred or suspended, and the person is not eligible for parole.

30 (b) sentencing the person to either the department of corrections or the Montana state prison or Montana

1 women's prison for a term of not more than 5 years, all of which must be suspended, to run consecutively to the
2 term imposed under subsection (1)(a); and

3 (c) a fine in an amount of not less than \$1,000 or more than \$10,000.

4 (2) The department of corrections may place an offender sentenced under subsection (1)(a) in a
5 residential alcohol treatment program operated or approved by the department of corrections or in a state prison.

6 (3) If a person is convicted of a violation of 61-8-401 or 61-8-406, the person has either a single
7 conviction under 45-5-106 or any combination of four or more prior convictions under 45-5-104, 45-5-205,
8 61-8-401, or 61-8-406 and the offense under 45-5-104 occurred while the person was operating a vehicle while
9 under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided
10 in 61-8-401(1), and the person was, upon a prior conviction, placed in a residential alcohol treatment program
11 under subsection (2), whether or not the person successfully completed the program, the person shall be
12 sentenced to the department of corrections for a term of not less than 13 months or more than 5 years or be fined
13 an amount of not less than \$1,000 or more than \$10,000, or both.

14 (4) The court shall, as a condition of probation, order:

15 (a) that the person abide by the standard conditions of probation promulgated by the department of
16 corrections;

17 (b) a person who is financially able to pay the costs of imprisonment, probation, and alcohol treatment
18 under this section;

19 (c) that the person may not frequent an establishment where alcoholic beverages are served;

20 (d) that the person may not consume alcoholic beverages;

21 (e) that the person may not operate a motor vehicle unless authorized by the person's probation officer;

22 (f) that the person enter in and remain in an aftercare treatment program for the entirety of the
23 probationary period;

24 (g) that the person submit to random or routine drug and alcohol testing; and

25 (h) that if the person is permitted to operate a motor vehicle, the vehicle be equipped with an ignition
26 interlock system.

27 (5) The sentencing judge may impose upon the defendant any other reasonable restrictions or conditions
28 during the period of probation. Reasonable restrictions or conditions may include but are not limited to:

29 (a) payment of a fine as provided in 46-18-231;

30 (b) payment of costs as provided in 46-18-232 and 46-18-233;

- 1 (c) payment of costs of assigned counsel as provided in 46-8-113;
- 2 (d) community service;
- 3 (e) any other reasonable restrictions or conditions considered necessary for rehabilitation or for the
- 4 protection of society; or
- 5 (f) any combination of the restrictions or conditions listed in subsections (5)(a) through (5)(e).
- 6 (6) Following initial placement of a defendant in a treatment facility under subsection (2), the department
- 7 of corrections may, at its discretion, place the offender in another facility or program.
- 8 (7) The provisions of 46-18-203, 46-23-1001 through 46-23-1005, 46-23-1011 through 46-23-1014, and
- 9 46-23-1031 apply to persons sentenced under this section.
- 10 (8) In addition to any other penalty imposed under this section, a court shall impose on each person
- 11 sentenced under this section a surcharge of not less than \$25 or more than \$100. If the court determines that the
- 12 person is unable to pay the surcharge, the court may waive payment of the surcharge. The surcharge imposed
- 13 by this subsection is not a fee or fine and must be imposed in addition to other taxable court costs, fees, or fines.
- 14 The amounts collected under this subsection must be forwarded to the department of revenue for deposit in the
- 15 account established in [section 2]."

16

17 **NEW SECTION. Section 9. Repealer.** Section 20-26-601, MCA, is repealed.

18

19 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 and 2] are intended to be codified

20 as an integral part of Title 20, chapter 26, part 6, and the provisions of Title 20, chapter 26, part 6, apply to

21 [sections 1 and 2].

22

23 **NEW SECTION. Section 11. Effective dates.** (1) Except as provided in subsection (2), [this act] is

24 effective July 1, 2009.

25 (2) [Section 1] is effective July 1, 2010.

26

- END -